

REMARKS

I. The Pending Claims and the Amendments to the Claims

With the entry of the above preliminary amendment, Claims 1-20 and 22-32 are pending. However, Claims 12 and 24 are withdrawn from consideration as directed to a non-elected species. Claim 21 stands canceled. Claim 1 has been amended by changing food product to meat product, and to recite the packaging article as surrounding the meat product and added liquid, with atmosphere having been evacuated from between the meat product and the packaging article. Support for the amendment to Claim 1 can be found in the specification at, for example, Page 3 lines 12-13, Page 5 lines 9-12, and Page 23 lines 3-8. Claim 25 has been amended by deletion of features added to Claim 1. Claims 26 and 27 have been amended by changing the word “package” to the phrase “packaging article”, to rely upon antecedent basis of the “packaging article” recited in Claim 1.

New Claims 28-32 are directed to the chemical composition of the slip agent in the seal layer of the packaging article recited in Claim 1. New Claim 28 recites the seal layer as comprising a fatty amide slip agent comprising at least one member selected from the group consisting of primary fatty acid, secondary fatty amide, tertiary fatty amide, and fatty bisamide. Support for Claim 28 can be found in the specification at Page 14 lines 19-22. New Claim 29 depends from Claim 28 and recites the fatty amide slip agent as comprising at least one member selected from the group consisting of erucamide, behenamide, oleamide, lauramide, stearamide, N,N'-ethylene bis-stearamide. Support for Claim 29 can be found in the specification at Page 14 line 23 through Page 15 line 11. New Claim 30 also depends from Claim 28 and recites the seal layer further comprises an antiblocking agent. New Claim 31 recites the antiblocking agent as comprising at least one member selected from the group consisting of corn starch, potato starch, and tapioca

starch. Support for new Claims 30 and 31 can be found in the specification at Page 16 lines 6-9. Claim 32 recites the seal layer as comprising at least one slip agent selected from the group consisting of fatty amide, fatty acid, fatty acid metal salt, fluorinated fatty acid, fluorinated fatty alcohol, fatty ester, petroleum wax, vegetable wax, animal wax, cellulose derivative, polysaccharide, silicone, fluorocarbon, fluoropolymer, and polyolefin wax. Support for Claim 32 can be found in the specification at Page 14 line 19 and Page 15 lines 10 through Page 16 line 5.

The amendments include no new matter.

II. Claims 1-11, 13-23, and 25-32 are Patentable over LUTHRA et al in view of NOEL et al

The final office action mailed 12 July 2005 states that LUTHRA et al teaches packaging for moist products including fresh red meat, and that moisture is exuded to the surface of meat, and that moisture is moisture no matter what the source. The office action goes on to state that the amount of moisture is a matter of degree and a function of product type, product size, and amount of liquid added, and that brine is involved is not seen as particularly significant since cuts of fresh meat will exude blood, protein and salt material regardless of the addition of brine.

In response, Applicants' specification states, on Page 1 lines 12-21, that the packaging of meat products having added liquid comprising brine causes contamination of the seal area of a packaging film used in the packaging of the injected meat product, and that a high percentage of the heat seals can leak immediately after sealing, after 24 hours, and/or after shipping of the packaged product. Applicants acknowledge that their specification does not provide data to demonstrate that the seal problems encountered when sealing through contamination including added liquid comprising brine are significantly greater than if sealing through the amount and type

of contamination typically left in the seal area during the packaging of the same meat product which does not have an added liquid. However, Applicants' specification at Page 1 line 12 through Page 2 line 19 infers that it is more difficult to seal through added liquid comprising brine than to seal through contamination left by the same type of meat product having no added liquid. This inference is accurate, as sealing through brine contamination is clearly more difficult than sealing through the contamination left from the juice of the same meat product which does not have added liquid comprising brine, and Applicants' claims are so limited. In addition, Applicants note that Column 1 lines 13-55 of NOEL et al also makes this same inference, which of course is also accurate. However, like Applicants' specification, NOEL et al also does not present data showing the increased difficulties in making a hermetic seal through contamination from a meat product having an added liquid comprising brine, versus making such a seal through contamination from the same meat product without any added liquid comprising brine.

Thus, it appears that the office action is questioning the existence of the difficulty produced by contamination of the added liquid comprising brine in the seal area. Applicants are certain of the existence of this problem because they are in the business of supplying packaging film to packagers of various meat products, including fresh meat products, both with and without added liquid comprising brine. As a result, Applicants know that the presence of contamination of the seal area during the packaging of a meat product having added liquid comprising brine produces a more difficult sealing environment than sealing through contamination from a meat product having no added liquid.

Page 3 of the final office action acknowledges that LUTHRA et al does not teach a heat seal layer including a slip agent for moist products such as meat. The office action goes on to state

that LUTHRA et al is also concerned with fogging, and that the products of LUTHRA et al also exude liquids of various compositions. The office action concludes that it would have been obvious to substitute one conventional moisture containing product for another moisture containing product to preserve the product and to reduce fogging, and that the film of LUTHRA et al would inherently have the capability of providing a stronger seal because it has the recited slip agent. Still more particularly, Page 4 of the final office action states that one of ordinary skill in the art would be fairly led to provide a liquid brine added food in the packaging of LUTHRA et al if for no other reason than for its antifogging properties, and that LUTHRA et al teaches that slip agents are conventionally associated with seal layers.

In response, Applicants first note that the basis for the modification of LUTHRA et al (i.e., modification of the meat product by the addition of liquid comprising brine as disclosed in NOEL et al) is the antifogging effect of the slip agent, and not “to preserve the product”. That is, the office action provides no explanation as to how the presence of the slip agent enhances product preservation. Thus, it is clear that the office action utilizes antifogging, and not product preservation, as the basis for the presence of the slip agent on the seal layer. However, as amended, Claim 1 recites the atmosphere as having been evacuated from between the meat product and the packaging article. As such, the vacuum inside the package forces all or least the vast majority of the packaging article to be directly against the contents of the package, eliminating the possibility of the fogging of the inside surface of the film which is in contact with the package contents. As a result, one of ordinary skill in the art would have had no motivation to use the antifogging technology of LUTHRA et al in a packaging article in which the atmosphere has been evacuated from between the meat product and the packaging article. Of course, the real-

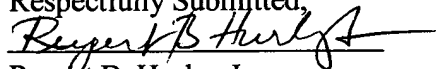
world motivation turns out to be a motivation absent from the prior art, i.e., the motivation to improve sealing through contamination deposited in the seal area during the packaging of a meat product having an added liquid comprising brine.

As to LUTHRA et al *inherently* providing a stronger seal when used to package a meat product having added liquid, Applicants first note again note that one of ordinary skill in the art would not have turned to LUTHRA et al for the packaging of a product in which the atmosphere has been evacuated from between the meat product and the packaging article, as recited in amended Claim 1, above. Second, one of ordinary skill in the art would not have known that the presence of the slip agent on the seal layer would have been beneficial for sealing through the contamination left from a meat product having an added liquid comprising brine. The law is clear that inherency is immaterial to obviousness, as "...Obviousness cannot be predicated on what is unknown." *In re Shetty*, 566 F.2d at 86, 195 USPQ at 757. See also *In re Nylon*, 369 F.2d 765, 768, 152 USPQ 106, 108 (CCPA 1966) ("[Inherency] is quite immaterial if...one of ordinary skill in the art would not appreciate or recognize the inherent result." These cases are supported by *In re Rijckaert*, 9 F.3d 1531, 1533, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

III. Conclusion

In summary, Applicants contend that Claim 1, as amended above, and all claims depending therefrom, are patentable over LUTHRA et al in view of NOEL et al, for at least the reasons presented above. Reconsideration of the patentability of Claims 1-11, 13-23 and 25-32 is respectfully requested in view of the amendments and remarks set forth above, with a view towards allowance.

Respectfully Submitted,



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